Supreme Court, U. S.
APR 19 1976
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1513

MICHAEL J. HOWLETT, Secretary of State of Illinois, in his official capacity,

Appellant,

v.

DENNIS N. LOVE, individually and on behalf of all others similarly situated,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

JURISDICTIONAL STATEMENT

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INDEX

	Page
Jurisdictional Statement	2
Opinion Below	2
Jurisdiction	2
Statute Involved	3
Question Presented	4
Statement of the Case	5
Argument	9
Conclusion	17
Appendix A—Memorandum Opinion and Order	A1
Appendix B—Injunction Order	B1
Appendix C—Notice of Appeal	C1
Appendix D—Illinois Revised Statutes, Chapter 95½, Section 6-206	D1
Appendix E—Rule 6-206 of the Rules and Regulations under the Illinois Vehicle Code	E1

TABLE OF AUTHORITIES

Bell v. *Burson*, 402 U.S. 535, 29 L. Ed. 2d 90, 91 S. Ct. 1586 (1971); 3, 9

Bibb v. *Navajo Freight Lines*, 359 U.S. 520, 3 L. Ed. 2d 1003, 79 S. Ct. 962 (1959); 10

Broughton v. *Warren*, 281 A. 2d 625 (1971); 16

Cafeteria Workers v. *McElroy*, 367 U.S. 886, 9 L. Ed. 2d 1230, 81 S. Ct. 1743 (1961); 9

Goss v. *Lopez*, 419 U.S. 565, 42 L. Ed. 2d 725 (1975);.. 15

Mullane v. *Central Hanover Trust Co.*, 339 U.S. 306, 94 L. Ed. 2d 865 (1950); 9

Stauffer v. *Weedlun*, 188 Neb. 105, 195 N.W. 2d 218 (1972); 14

State v. *Skinner*, 207 N.W. 2d 495 (N.D. 1973); 16

United States v. *Georgia Public Service Commission*, 371 U.S. 285, 9 L. Ed. 2d 317, 83 S. Ct. 397 (1963). .. 3

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JURISDICTIONAL STATEMENT

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Appellant, Michael J. Howlett, Secretary of State of Illinois, appeals from the final judgment of a three-judge court in the United States District Court for the Northern District of Illinois, Eastern Division. Appellant respectfully submits this Statement to demonstrate that the Supreme Court of the United States has jurisdiction of this appeal and that substantial questions are presented.

OPINION BELOW

The Memorandum Opinion and Order of the United States District Court, Northern District, Eastern Division, which is the subject of this appeal, is not yet officially reported. The opinion and a separate injunction order entered in this case are reprinted herein at Appendices A and B.

JURISDICTION

Appellee, Dennis N. Love, instituted this class action against the appellant under 28 U.S.C., §§ 1331, 1343, 2201 and 2202 and 42 U.S.C., § 1983 challenging section 6-206(a)(3) of the Illinois Motor Vehicle Code (Ill. Rev. Stat. 1975, ch. 95½, § 6-206(a)(3)), on the ground that it denies appellee due process of law in violation of the fourteenth amendment to the United States Constitution. Section 6-206(a)(3), as applied through administrative rules, and with reference to related statuory provisions, authorizes the Secretary of State of Illinois to suspend or revoke a driver's license without preliminary hearing, based on the driver's traffic convictions and the number of points the driver has accumulated on those convictions. Appellee alleged this

section was unconstitutional both on its face and as applied, and sought declaratory and injunctive relief.

A three-judge court, convened pursuant to 28 U.S.C., §§ 2281 and 2284, entered a permanent injunction granting appellee the relief sought on January 20, 1976. The district court held that the statute denied appellee adequate notice and hearing in violation of the fourteenth amendment to the United States Constitution.

The appellant, Michael J. Howlett, filed his notice of appeal in the district court on February 18, 1976, a copy of which is reprinted at Appendix C. Jurisdiction of the Supreme Court of the United States to review this case by direct appeal is conferred by 28 U.S.C. § 1253. The following decisions sustain the jurisdiction of this Court to review this judgment on direct appeal from a three-judge district court:

Bell v. *Burson*, 402 U.S. 535, 29 L. Ed. 2d 90, 91 S. Ct. 1586 (1971);

United States v. *Georgia Public Service Commission*, 371 U.S. 285, 9 L. Ed. 317, 83 S. Ct. 397 (1963).

STATUTE INVOLVED

Section 6-206 of the Illinois Motor Vehicle Code, Illinois Revised Statutes 1975, chapter 95-½, is reprinted in relevant part at Appendix D.

QUESTION PRESENTED

Whether section 6-206(a)(3) of the Illinois Motor Vehicle Code (Ill. Rev. Stat. 1975, ch. 95½, § 60-206(a)(3)), which authorizes the Secretary of State of Illinois to suspend or revoke a driver's license without preliminary hearing based on the number of traffic violations for which the driver has been convicted and the number of "points" accumulated on those convictions, affords the driver due process of law.

STATEMENT OF THE CASE

The appellee, Dennis N. Love, (hereinafter referred to as "plaintiff"), instituted this class action to enjoin appellant-defendant, Michael J. Howlett, (hereinafter referred to as the "Secretary of State"), from revoking the plaintiff's driver's license, and the licenses of others similarly situated, pursuant to an alleged unconstitutional provision of the Illinois Motor Vehicle Code. Section 6-206(a)(3) of the Code (Ill. Rev. Stat. 1975, ch. 95-½, § 6-206(a)(3)) authorizes the Secretary of State to suspend or revoke the license of any driver without preliminary hearing based on the information contained in the driver's record.

On May 28, 1975, the Secretary of State mailed the plaintiff a notice of an order revoking his driver's license, effective June 6, 1975. Plaintiff thereupon filed the instant suit in the district court, which on June 6th granted plaintiff's motion for a temporary restraining order, pending a full hearing on the issues in the case. The temporary restraining order was conditioned on plaintiff's applying for a hardship license, which plaintiff subsequently applied for and which was granted.

In his complaint, filed June 5, 1975, plaintiff challenges the constitutionality of section 6-206(a)(3) of the Code, pursuant to which his license had been revoked, and seeks to enjoin the enforcement of this statute. Plaintiff asserts that this section violates the due process clause in that it denies plaintiff a hearing prior to revocation.

Section 6-206(a)(3) authorizes the Secretary of State to revoke or suspend the license of any person without preliminary hearing upon a showing by the licensee's record that such person has been repeatedly convicted of vio-

lations which indicate the lack of ability to exercise ordinary and reasonable care or indicate disrespect for traffic laws and the safety of others. Following revocation, the licensee is entitled to a hearing under section 2-118 of the Code. Ill. Rev. Stat. 1975, ch. 95-½, § 2-118.

Rule 6-206(a)(3) of the Rules and Regulations under the Illinois Vehicle Code, promulgated by the Secretary of State pursuant to section 2-104 of the Code (Ill. Rev. Stat. 1975, ch. 95-½, § 2-104), provides that a driver who has had his license suspended three times within a ten-year period shall have his license revoked. Section 6-206(a)(2) of the Code and Rule 6-206(a)(2) authorize the Secretary of State to suspend a license without preliminary hearing upon the licensee's conviction for three traffic offenses within a 12-month period. The length of the suspension is governed by the number of points a driver has accumulated on those convictions, each type of offense being assigned a certain number of points according to its severity. Certain minor offenses (Ill. Rev. Stat. 1973, ch. 95-½, § 6-204(a)(2)) do not count toward suspension and have no points assigned to them. Rule 6-206 is reprinted in relevant part at Appendix E.

The plaintiff's driving record, reported from 1968, shows numerous convictions for traffic violations. Plaintiff's license was first suspended on November 4, 1969, for a period of two months, pursuant to section 6-206(a)(2) of the Code, and Rule 6-206(a)(2) (three convictions in 12-month period). His license was suspended a second time on March 17, 1970, for a period of two months upon his conviction for operating a vehicle while his license was suspended, pursuant to section 6-303(b) of the Code (Ill. Rev. Stat. 1975, ch. 95-½, § 6-303(b), which requires the Secretary to take such action.

On March 31, 1975, the plaintiff was convicted of his third speeding violation within a seven-month period. The Secretary had sent plaintiff a letter warning that a third conviction would result in the loss of his driving privileges on March 27th. Thereafter, the plaintiff's license was revoked pursuant to section 6-206(a)(3) of the Code and Rule 6-206(a)(3) (three suspensions within a ten-year period). The district court found it immaterial that the Secretary had not taken the intermediate step of suspending plaintiff's license for his three convictions in one year, pursuant to section 6-206(a)(2) of the Code and Rule 6-206(a)(2) (Appendix A, p. A6).

The plaintiff's complaint alleges that a revocation under section 6-206(a)(3) is a denial of due process of law in that it fails to provide adequate notice and hearing on the issue of such revocation prior to the actual revocation. A second count alleges that the statute is unconstitutionally vague in violation of due process of law because the statute fails to adequately inform the licensee of the standards used to determine if revocation is applicable.

Plaintiff's request for a hearing by a three-judge panel on the issue of the constitutionality of section 6-206(a)(3) was granted on June 9, 1975. The three-judge court entered its Memorandum Opinion and Order on January 20, 1976, on cross motions for summary judgment. The court held that plaintiff's right to procedural due process was denied by the practice of the Secretary under section 6-206(a)(3), because a separate hearing on the issue of revocation was not provided prior to the actual issuance of a revocation order. The court found it unnecessary to rule on plaintiff's vagueness challenge to the statute in view of its holding on the procedural due process issue. The court also entered a separate injunction order, *nunc pro tunc,* as of January

20, 1976, on April 13, 1976, clarifying its original order. The latter order concludes that section 6-206(a)(3) is unconstitutional, and enjoins the Secretary from enforcing that section. The third member of the panel, the Honorable Richard W. McLaren, United States District Court, did not sign this order because he was deceased.

The plaintiff's class was never certified.

ARGUMENT

THE REVOCATION OR SUSPENSION OF A DRIVER'S LICENSE WITHOUT A PRIOR HEARING, BASED ON THE NUMBER OF TRAFFIC VIOLATIONS FOR WHICH A DRIVER HAS BEEN CONVICTED AND THE NUMBER OF "POINTS" ACCUMULATED ON THOSE CONVICTIONS, COMPORTS WITH PRINCIPLES OF DUE PROCESS OF LAW.

The Illinois procedure, whereby a driver's license is suspended or revoked for excessive convictions for traffic offenses, effects a valid constitutional accommodation of the conflicting interests of the State and the licensee. The district court was able to reach an opposite conclusion only by construing Illinois law in a way most likely to cast doubt on its validity, and then mechanically applying this Court's decision in *Bell* v. *Burson,* 402 U.S. 535, 29 L. Ed. 2d 90, 91 S. Ct. 1586 (1971), without even identifying any substantial interest that would be served by a prerevocation hearing.

The interpretation and application of the due process clause does not lend itself to the promulgation of an inflexible procedure universally applicable to every situation. *Cafeteria Workers* v. *McElroy,* 367 U.S. 886, 895, 6 L. Ed. 2d 1230, 81 S. Ct. 1743 (1961). The concept requires only that the deprivation of property interests be preceded by notice and an opportunity to be heard appropriate to the nature of the case. *Mullane* v. *Central Hanover Trust Co.,* 339 U.S. 306, 94 L. Ed. 865 (1950).

A determination of what process is due necessarily requires a balancing of the competing interests of the parties involved. Here, the plaintiff's interests in not having

his driver's license revoked pursuant to section 6-206(a)(3) of the Illinois Code must be balanced against the strong interest of the State of Illinois in the protection of the health and safety of its citizens. Specifically, the interest of the plaintiff which a prerevocation hearing would serve must be weighed against the State's interest in the speedy removal of a safety hazard from its highways. The state unquestionably has the right to regulate the use of its highways and to limit their use to those who would not present a risk to the public health and safety. *Bibb* v. *Navajo Freight Lines,* 359 U.S. 520, 3 L. Ed. 2d 1003, 79 S. Ct. 962 (1959).

In *Bell* v. *Burson* this Court held that once a driver's license was issued by the state, it was not to be taken away without the procedural due process required by the fourteenth amendment of the United States Constitution 402 U.S. at 539, 29 L. Ed. 2d at 94. It is submitted that section 6-206(a)(3) of the Illinois Code and the Secretary's practices under that section provide such due process, and that the plaintiff in this case has had an opportunity to be heard appropriate to the nature of the case.

Section 6-206(a)(3) of the Code provides:

> (a) The Secretary of State is authorized to suspend or revoke the license or permit of any person without preliminary hearing upon a showing by his records or other sufficient evidence that such person:
>
> • • •
>
> 3. Has been repeatedly involved as a driver in motor vehicle collisions or has been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle or disrespect for the traffic laws and the safety of other persons upon the highway:

This section must be viewed in light of the rules and regulations promulgated by the Secretary of State and other related statutory provisions. These rules and regulations, adopted pursuant to valid legislative authority, have the force and effect of law. Ill. Rev. Stat. ch. 95½, !2-104; ch. 127, §263 *et seq.*

Section 6-206(a)(2) of the Code authorizes the Secretary to suspend the license of a driver without preliminary hearing based upon a showing by his records that he has been convicted of three traffic violations within a 12-month period "so as to indicate the disrespect for the traffic laws and a disregard for the safety of other persons on the highway" (See Appendix D). Under Rule 6-206(a)(2), the Secretary may suspend the license of a driver convicted of three violations within a 12-month period, with the length of the suspension dependent on the number of points the driver has accumulated on those convictions (See Appendix E). Rule 6-206(a)(3) provides that a "person who has been suspended thrice within a 10 year period shall be revoked." The number of points assigned to a conviction depend on the type of offense involved, and certain of the less serious offenses, which do not directly relate to highway safety, neither count toward suspension nor have any points assigned to them.

The purpose of this statutory scheme is clear. A driver whose record indicates that his continued driving presents a threat to the safety of others, should have his license revoked or suspended, depending on the gravity of the threat involved. Because the driver is afforded the opportunity for a hearing on the merits of each violation on which his suspension is based, the defect inherent in the *Bell* v. *Burson* statute is not present here.

In *Bell*, this Court held that a prior hearing must precede a revocation or suspension of driving privileges where the state's interest was in protecting the public from a financially irresponsible driver. The crucial factor in *Bell* decision was that prior to the revocation of a license under Georgia's financial responsibility statute, the licensee was not accorded a hearing on the issue of fault or liability for the accident which resulted in the revocation. The Court stated, 402 U.S. at 542, 29 L. Ed. 2d at 96:

> We hold, then, that under Georgia's present statutory scheme, before the State may deprive petitoner of his driver's license and vehicle registration it must provide a forum for the determination of the question whether there is a reasonable possibility of a judgment being rendered against him as a result of the accident.

The practice of the Secretary of the State of Illinois conforms to the dictates of *Bell* v. *Burson*. Each time a licensee is convicted of a violation which counts toward his suspension and which results in an assignment of points, the dicensee is accorded a full opportunity to be heard on the issue of fault. It is only when the driver has been so convicted that the Secretary of State is authorized to revoke or suspend.

The hearings that a driver is afforded on his violations are clearly more than adequate to support a revocation or suspension. As this Court noted in *Bell*, 402 U.S. 540, 29 L. Ed. 2d 95:

> Clearly, however, the inquiry into fault or liability requisite to afford the licensee due process need not take the form of a full adjudication of the question of liability. . . . [W]e hold that procedural due process will be satisfied by an inquiry limited to the determination whether there is a reasonable possibility of judgments in the amount claimed being rendered against the licensee.

Judged by the requirements of *Bell*, the Illinois procedure clearly affords a driver an adequate opportunity to be heard on the issues which underlie his suspension or revocation. The district court's reliance on *Bell* is misplaced.

The district court's suggestion that a driver's suspension or revocation depends on the determination of an issue independent of the fault issue involved in his convictions is at direct odds with the Illinois law cited to that court. The district court states that a suspension or revocation depends not only on the convictions, but also on whether those convictions indicate "lack of ability to use due care or disrespect for the traffic laws and safety of others," and that neither the statute nor the regulation sanctions the disregard of a determination of this issue (Appendix A, pp. A5-6). The court ignores the fact that Rule 206(a) forbids the Secretary to "look behind the conviction" (See Appendix E). Mitigating circumstances behind each conviction are, thus irrelevant.

The only other determination relevant to whether the convictions indicate lack of ability or disrespect concerns whether the type of offense which underlies the convictions indicates such lack of ability or disrespect. This determination, however, is contained within the statute and rules, since certain types of violations count toward suspension while others do not, and each type of violation is assigned a certain number of points depending on its severity. The Secretary is not authorized by Rule 6-206(a)(2) to disregard convictions or accumulated points.

The statute and rules do not require consideration of any factors other than the number of convictions and accumulation of points, since embodied within the Illinois statutory scheme is a decision that the repeated violation of traffic laws indicates either "a lack of ability to exercise ordinary

and reasonable care in the safe operation of a motor vehicle or disrespect for the traffic laws and safety of other persons upon the highway." The Secretary simply does not have the discretion of which the court speaks, except, of course, in promulgating rules and regulations, and this type of discretion does not operate in an individual case. As the district court itself, notes, "the accumulation of points is the only fact which is considered [by the Secretary] in determining whether to suspend or revoke" (Appendix A, p. A6).

The only interest which a prerevocation hearing would serve, is a review of the driver's records to determine whether a mistake has been made in the ministerial task of recording convictions and points. The likelihood of error in this regard is small, and is clearly outweighed by the State's interest in removing unsafe drivers from the road.

Furthermore, after notice of revocation, the licensee is not left without a remedy. There is a hiatus of several days between notification and the effective date of the revocation (here from June 2 to June 6). During this time, the licensee can request a check of his driving record for ministerial mistakes. In almost all cases of this sort, a hearing prior to revocation would serve no valid purpose other than putting the State through the added burden of providing a hearing which would disclose that the assignment of points to the licensee's driving record has been properly made.

The Supreme Court of Nebraska upheld a statutory scheme very similar to the one involved here in *Stauffer* v. *Weedlun,* 188 Neb. 105, 195 N.W. 2d 218 (1972). In so holding, the court stated, 195 N.W. 2d at 223:

> We think that in a very real sense the essential facts have been determined in the judicial proceedings in connection with each conviction. In a very real sense the Director acts only ministerially. The result — the revocation — flows from the operation of the statute upon the already judicially determined facts, that is, the series of convictions of traffic offenses. Of these the motorist already has knowledge. Of their effect point-wise he is charged by law with knowledge just as with any other case of knowledge of the law. These circumstances do, in our opinion, make the procedures applicable to revocation of a driver's license for an accumulation of points for traffic offense conviction clearly distinguishable from revocation under the financial responsibility law as in Bell v. Burson, *supra.*

The court continued, 195 N.W. 2d at 224:

> Under the Nebraska scheme the Director acts ministerially. The likelihood of error is small. The compelling public interest in removing from the highways those drivers whose records demonstrate unsafe driving habits outweighs the need for notice and hearing prior to the order to protect the individual against mistake. In this connection the matter must be viewed not as an isolated case but in the collective aspect, that is, the removal of many such drivers from the highways.

Finally, assuming arguendo, that there are issues involved in a revocation or suspension which indicate the need for a hearing, there are factors involved here which obviate the need for a hearing prior to revocation. In *Goss* v. *Lopez,* 419 U.S. 565, 42 L. Ed. 2d 725 (1975), this Court stated that there are recurring situations in which prior notice and hearing cannot be insisted upon. Such a situation was recognized to exist in an expulsion case if the presence of certain students posed a continuing danger to persons or property. Revoking the license of an incompetent driver who endangers the lives of the public is a similar situation.

Although the Court in *Bell* v. *Burson, supra,* did not believe that failure to comply with a financial responsibility statute was such an emergency situation, it did state that emergency situations were a noted exception to the due process requirement of prior hearing. The interest of the state in preventing injury to the public must be considered to create a more emergent situation than an interest of the state in insuring that once an injury does occur, it will be sufficiently recompensed.

Several states have upheld a driver's license revocation based on repeated convictions in that a record of frequent driving violations constitutes an emergency situation under the *Bell* decision. *State* v. *Skinner,* 207 N.W. 2d 495 (N.D. 1973); *Broughton* v. *Warren,* 281 A. 2d 625 (1971). The court in *Broughton* stated:

> The suspension of a driver's license under the kind of statute and proceeding here involved is not to punish the driver, but to protect the public from those who have demonstrated that their driving presents a hazard to life and property.

In the instant case, the district court found that the emergency exception was inapplicable because of the delay between the plaintiff's violation and the notice of revocation. The court, however, failed to take into account that before a revocation could take place, the plaintiff was entitled to a hearing on the issue of fault. Only after conviction could points be assigned to defendant's driving record. Although a delay of this sort may not further the state's interest in securing its highways, it does comply with the minimum requirements of *Bell* v. *Burson.*

CONCLUSION

For the foregoing reasons, appellants believe that the questions presented by this appeal are substantial and of broad importance and application. Many states have a statutory scheme similar to the one involved here. *See* 60 A.L.R. 3d 361. Appellants, therefore, respectfully urge this Honorable Court to give this case its full consideration and reverse the district court's judgment.

Respectfully submitted,

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APPENDICES

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DENNIS N. LOVE, individually and on behalf of all others similarly situated, *Plaintiff*, v. MICHAEL J. HOWLETT, Secretary of the State of Illinois, in his official capacity, *Defendant.*	No. 75 C 1821

Before TONE, Circuit Judge, and McLAREN and McGARR, District Judges.

MEMORANDUM OPINION AND ORDER

McGARR, District Judge. The plaintiff in this suit raises a substantial issue as to the constitutionality of Ill. Rev. Stat. Ch. 95½, § 6-206(a)(3), and seeks to enjoin the enforcement thereof. Accordingly, a three-judge court has been convened pursuant to 28 U.S.C. §§ 2281 and 2284. The following is the opinion of that court.

The plaintiff, Dennis M. Love, seeks to enjoin the defendant, Michael J. Howlett, from revoking the driver's license of the plaintiff and others similarly situated, with-

out a hearing prior to revocation. This practice is alleged to be in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. Plaintiff additionally states a claim under 42 U.S.C. § 1983. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1343, 1331, 2201 and 2202.

The defendant has filed a motion to dismiss supported by material extraneous to the pleadings. This motion will be taken as a motion for summary judgment under Rule 12(b), Fed. R. Civ. P. The plaintiff has filed a cross motion for summary judgment. The parties have briefed the issues and their motions will be considered simultaneously.

The facts in this particular action are as follows. The plaintiff, a truck driver, was issued citations for violations of traffic laws on three occasions pertinent to this suit. Prior to these citations, his license had been suspended for a time on March 17, 1970, and on October 22, 1969. He was convicted on the first citation on September 6, 1974. He was convicted on the second on November 21, 1974. On March 27, 1975, plaintiff was notified by letter that a further conviction would result in loss of his driving privileges. The third citation had been issued to the plaintiff on February 12, 1975, and his subsequent conviction occurred on March 31, 1975.

On June 3, 1975, plaintiff received a notice from the office of the Secretary of State that his license to operate a motor vehicle had been revoked effective June 6, 1975. The revocation was effected pursuant to the statute in issue here, Ill. Rev. Stat. Ch. 95½, § 6-206(a)(3). The reason for revocation stated on the notice was plaintiff's "having been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates disrespect for the traffic laws."

On June 6, 1975, upon application by the plaintiff, this court issued a temporary restraining order against the Secretary of State pending a resolution of the issues presented in the complaint filed June 5, 1975. The order was conditioned on plaintiff's application for a hardship driver's license. Plaintiff applied for such license on June 10, 1975, and was issued such a license on July 25, 1975.

Plaintiff's attack on the constitutionality of the statute has three aspects. The main thrust of the attack is directed to the failure of the statute to provide adequate notice and hearing to affected parties prior to suspension or revocation of their driver's licenses. Additionally, plaintiff challenges the statute as unconstitutionally vague in that it fails to establish adequate guidelines to be followed by the Secretary of State in suspension or revocation of licenses pursuant to its provisions. Lastly, the statute allegedly fails to inform the plaintiff of standards used by the Secretary of State for the suspension and revocation of drivers' licenses.

Illinois Revised Statutes Ch. 95½, § 6-206(a)(3) provides:

> "(a) The Secretary of State is authorized to suspend or revoke the license or permit of any person without preliminary hearing upon a showing by his records or other sufficient evidence that such person:
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> • • •
>
> 3. Has been repeatedly involved as a driver in motor vehicle collisions or has been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle or disrespect for the traffic laws and the safety of other persons upon the highway. . . ."

It is patent that the statute authorizes the suspension or revocation of a driver's license without any preliminary hearing.

The Supreme Court has stated unequivocally that driver's licenses, once issued, "are not to be taken away without that procedural due process required by the Fourteenth Amendment." *Bell* v. *Burson,* 402 U.S. 535, 539 (1971), citing *Sniadach* v. *Family Finance Corp.,* 395 U.S. 337 (1969), and *Goldberg* v. *Kelly,* 397 U.S. 254 (1970). The question remains as to what procedural due process is required in the instant case.

The defendant contends that this case is distinguishable from *Bell* v. *Burson, supra.* In *Bell* v. *Burson,* the State of Georgia suspended the driver's license of an uninsured motorist who was involved in an accident because of his failure to meet the State's financial responsibility requirement. No hearing was accorded the petitioner on the issue of whether or not he was liable for any damages as a result of the accident. The State's interest in protecting a claimant from the possibility of an unrecoverable judgment was held to be insufficient to justify depriving its citizens their right to due process, in that case defined as the right to a hearing on the issue of fault.

In the instant suit, it is argued, there is no determination of fault made prior to hearing. The only factors entering into the Secretary's decision are the number of convictions on a driver's record, each conviction obtained after opportunity was afforded plaintiff to contest same. This argument is based on the regulations promulgated by the Secretary, which provide that:

> "A person repeatedly involved in collisions or convictions to a degree which indicates the lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle, or whose record indicates disrespect for traffic laws and the safety of other persons on the highway, and who has accumulated sufficient points to warrant a second suspension within a 5-year period, may either be suspended or revoked by the Secretary of State, based on the number of points[1] in his record. A person who has been suspended thrice in a ten-year period shall be revoked."

Defendant maintains that the action of the Secretary is automatic under these guidelines and that a hearing is unnecessary to determine fault. The only purpose to be served by a hearing would be the authentication of the record or of the identity of the driver.

Assuming, as defendant suggests, that the plaintiff had adequate time to contest the authenticity of his record, he has still been denied procedural due process. The statute allows the Secretary a great deal of discretion in taking the action he deems necessary to protect the public from unsafe drivers. Furthermore, neither the statute nor the regulation provides that suspension or revocation of a license follows automatically from conviction of a given number of traffic offenses of certain types. The statute makes suspension or revocation dependent on a determination of whether the driver's repeated involvement in collisions or conviction of offenses indicates lack of ability to use due care or disrespect for the traffic laws and the safety of others. The regulation makes suspension or revocation dependent *both* on such a determination *and* the accumulation of a given number of points, and even then the Secretary "may" but is not required to suspend or

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1. A system of assigning points to various violations has been prescribed by the Secretary in the regulations.

revoke the driver's license. Only when a driver has been suspended thrice in a ten-year period is the Secretary's action made mandatory.[2] Apparently in practice the accumulation of points is the only fact which is considered in determining whether to suspend or revoke, but neither the statute nor the regulation sanctions the disregard of the conditions of lack of ability to use due care or disrespect for traffic laws and the safety of others. So long, at least, as Illinois law makes a determination of the existence of such lack of ability or disregard a condition to revocation or suspension, a licensee must be given a hearing on those issues before his license can be suspended or revoked.

The defendant argues further that *Bell* v. *Burson* is distinguishable in that the governmental interest protected by the statute in issue in that case was inferior to that in the instant case. In the instant case, the state's interest is "the protection of the public health and safety on its highways." We agree with our brothers in the Western District of Pennsylvania that this "legislation is an intelligent and commendable effort to diminish the carnage on our highways by focusing attention on the most common cause of accidents, the careless and code-violating driver." *Reese* v. *Kassab,* 334 F. Supp. 744 (1971). How-

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2. In the instant case, had plaintiff's license been suspended instead of revoked, he would have then been subject to the mandatory revocation provision. Since a suspension requires the same due process safeguards as does a revocation, the defendant's elimination of a step in the revocation process is immaterial to the ultimate determination of the issues in this case.

ever, we also agree with their ultimate conclusion that in pursuing this interest the state must also accommodate the individual's right to procedural due process."

Finally, we disagree with the defendant's argument that this is an "emergency situation" specifically excepted from the holding in *Bell* v. *Burson.* As an indication that this is not such an emergency situation, we point out that in at least one situation where suspension or revocation is allowed, the state furnishes a hearing before taking such action. Ill. Rev. Stat. Ch. 95½ § 6-206(a)(17). Furthermore, under Ill. Rev. Stat. Ch. 95½ § 6-205, which mandates revocation for certain offenses, such as manslaughter or driving while intoxicated, the revocation is effected only after conviction of the underlying offense.[3] A fault determination being the only distinguishing characteristic of § 6-205, it follows that, in view of the state's regulatory scheme, no emergency situation exists in this case.

In further contravention of the defendant's argument that an "emergency situation" exists is the length of time involved in the instant case between plaintiff's final conviction and his ultimate revocation. Even taking the defendant's position that the conviction was not finalized until 30 days had transpired, a period of almost a month elapsed before plaintiff was sent his notice of revocation. This period of time, while not extreme, affords ample opportunity for a hearing.

We therefore conclude that the practice of the Secretary of State whereby operator's licenses are suspended or revoked under Chapter 95½ § 6-206(a)(3) of the Illinois

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3. The counterargument of defendant that a hearing on the issue of fault is necessary before mandatory revo-

Revised Statutes is unconstitutional by virtue of its failure to provide the affected party notice and adequate opportunity to be heard.

In view of our holding on the issue of procedural due process, we need not reach the issue of the substantive unconstitutionality of the Act in question.

Accordingly, plaintiff's motion for summary judgment is granted as to Count I of the complaint. Count II is rendered moot by this decision.

ENTER:

/s/ PHILIP W. TONE
Philip W. Tone, Judge
United States Court of Appeals

/s/ RICHARD W. McLAREN
Richard W. McLaren, Judge
United States District Court

/s/ FRANK J. McGARR
Frank J. McGarr, Judge
United States District Court

DATED: January 20, 1976

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cation under § 6-205, whereas no fault determination need be made under § 6-206(a)(3), has been discussed previously.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DENNIS N. LOVE, individually and on behalf of all others similarly situated, *Plaintiff,* v. MICHAEL J. HOWLETT, Secretary of the State of Illinois, in his official capacity, *Defendant.*	No. 75 C 1821

ORDER

This cause coming on to be heard on the motion of the defendant Michael J. Howlett, Secretary of State of Illinois, taken as a motion for summary judgment and the cross motion of the plaintiff for summary judgment, and the Court having considered the plaintiff's complaint and all motions and memoranda filed by the parties, and the Court having made and filed its findings of fact and its conclusion of law that 95½ § 6-206(a)(3) of the Illinois Re-

vised Statutes is unconstitutional, all as set forth in the Court's Memorandum Opinion of January 20, 1976,

IT IS ORDERED, that the defendant Secretary of State, his agents, servants, employees, attorneys, and all persons in active concert and participation with them be and are hereby restrained and enjoined from enforcing Chapter 95½ § 6-206(a)(3) of the Illinois Revised Statutes.

ENTER:

/s/ PHILIP W. TONE

Philip W. Tone, Judge,

United States Court of Appeals

/s/ FRANK J. McGARR

Frank J. McGarr, Judge,
United States District Court

DATED: April 13, 1976,

Nunc pro tunc, as of January 20, 1976

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DENNIS N. LOVE, individually and on behalf of all others similarly situated, *Plaintiff,* v. MICHAEL J. HOWLETT, Secretary of the State of Illinois, in his official capacity, *Defendant.*	No. 75 C 1821

NOTICE OF APPEAL TO THE SUPREME
COURT OF THE UNITED STATES

PLEASE TAKE NOTICE that the defendant, MICHAEL J. HOWLETT, by his attorney, WILLIAM J. SCOTT, Attorney General for the State of Illinois, hereby appeals to the United States Supreme Court from the final judgment entered in this cause on January 20, 1976.

This appeal is taken pursuant to the 28 U.S.C. 1253.

WILLIAM J. SCOTT,

Attorney General,
State of Illinois,

Attorney for Defendant- Appellant.

By: PAUL J. BARGIEL,
Assistant Attorney General,
160 N. LaSalle St., Suite 800,
Chicago, Illinois 60601 (793-5635).

RECEIVED: Feb. 18, 1976

H. Stuart Cunningham, Clerk

United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DENNIS N. LOVE, individually and on behalf of all others similarly situated,

Plaintiff,

v.

MICHAEL J. HOWLETT, Secretary of the State of Illinois, in his official capacity,

Defendant.

No. 75 C 1821

NOTICE OF FILING AND PROOF OF SERVICE
OF NOTICE OF APPEAL

TO: Alan M. Freedman, Allen L. Ray & Richard J. Hess
Attorneys for Plaintiff
Mid-South Law Office
4655 South Michigan
Chicago, Illinois 60653 (538-0733)

PLEASE TAKE NOTICE that the undersigned has this 18th day of February, 1976, filed with the Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division, the attached Notice of Appeal to the Supreme Court of the United States.

WILLIAM J. SCOTT,
Attorney General,
State of Illinois.

By: PAUL J. BARGIEL,
Assistant Attorney General,
160 N. LaSalle St., Suite 800,
Chicago, Illinois 60601 (793-5635).

STATE OF ILLINOIS
COUNTY OF COOK SS.

MAUREEN McMAHON, being first duly sworn, states that she served a copy of the above notice of filing and proof of service of notice of appeal and attached notice of appeal on the attorneys of record at the address listed above, by mailing copies of same, first-class mail, postage paid, this 18th day of February, 1976.

MAUREEN McMAHON.

SUBSCRIBED AND SWORN to before me this
18th day of February, 1976.

MARY GRIFFIN,
Notary Public.

APPENDIX D

Illinois Revised Statutes 1975, Chapter 95½, Section 6-206, in relevant part provides:

§6-206. Discretionary authority to suspend or revoke license or permit — Right to a hearing.

(a) The Secretary of State is authorized to suspend or revoke the license or permit of any person without preliminary hearing upon a showing by his records or other sufficient evidence that such person:

1. Has committed an offense for which mandatory revocation of license or permit is required upon conviction;

2. Has been convicted of not less than 3 offenses against traffic regulations governing the movement of vehicles with the exception of those offenses excluded under the provisions of Section 6-204(2), committed within any 12 month period so as to indicate the disrespect for traffic laws and a disregard for the safety of other persons on the highways; conviction upon 3 charges of violation of Section 11-601 of this Act committed within a period of 12 months shall be deemed grounds for the revocation or suspension of a license or permit under this Section, provided that no such revocation or suspension shall be entered more than 6 months subsequent to the date of conviction of the 3rd offense;

3. Has been repeatedly involved as a driver in motor vehicle collisions or has been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle or disrespect for the traffic laws and the safety of other persons upon the highway;

APPENDIX E

Rule 6-206 of the Rules and Regulations under the Illinois Vehicle Code, in relevant part provides:

RULE 6-206(a) — Discretionary authority to suspend or revoke a license or permit.

The Secretary of State is authorized to exercise discretionary authority to suspend or revoke driving privileges and the evidence thereof without a preliminary hearing, or to decline to suspend or revoke such driving privileges. In making a determination of the action to be taken, the Secretary of State shall take into consideration the severity of the offense and conviction, the number of offenses and convictions, and prior suspensions or revocations on the abstract of the driver's record. The Secretary may also take into consideration the points accumulated by the driver and noted on his driving record.

For the purpose of this Rule and its companion rules, a conviction is the final adjudication of "guilty" by a court of competent jurisdiction, either after a bench trial, trial by jury, plea of guilty, order of forfeiture, or default, as reported to the Secretary of State, and the Secretary of State is not authorized to look behind the conviction.

The provisions of this Rule and its companion rules are subject to the provisions of the Drivers License Compact.

Upon the suspension or revocation of a license, the affected driver may make a written request to the Secretary of State for an administrative hearing pursuant to Section 2-118 of the CODE, and any final order resulting therefrom shall be subject to judicial review.

The procedures to be followed shall be identical for those provided under Rule 7-101 [Administration of Hearings] and shall assure the affected driver of his Constitutional rights to due process of law and equal protection under the law.

Attached hereto, made a part hereof, is the following:

Point system promulgated by the Secretary of State to Rule 6-204 [not reproduced].

RULE 6-206(a)1 — Offenses where mandatory revocation is possible.

When a driver has committed an offense for which mandatory revocation of license or permit is required upon conviction, the Secretary may either suspend or revoke said license or permit.

RULE 6-206(a)2 — 3 traffic offenses within 12 months.

A person who has been convicted of three (3) or more offenses against traffic regulations, governing the movement of vehicles, with the exception of those offenses excluded under provisions of Section 6-204(2) and whose violations have occurred within a twelve (12) month period may be suspended as follows:

Number of Points	*Action*
20 to 44	Suspension up to 2 months
45 to 74	Suspension up to 3 months
75 to 89	Suspension up to 6 months
90 to 99	Suspension up to 9 months
100 to 109	Suspension up to 12 months
Over 110	Revocation for not less than 12 months.

RULE 6-206(a)3 — Repeated convictions or collisions.

A person repeatedly involved in collisions or convictions to a degree which indicates the lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle, or whose record indicates disrespect for traffic laws and the safety of other persons on the highway, and who has accumulated sufficient points to warrant a second suspension within a 5 year period, may either be suspended or revoked by the Secretary of State, based upon the number of points in his record. A person who has been suspended thrice within a 10 year period shall be revoked.